

### Remarks/Arguments

#### 35 USC § 102(e) Rejection

In the Office Action, claims 48 and 49 were rejected under 35 USC § 102(e) as allegedly being anticipated by Johnson et al (US 6,581,011). In response, Applicant has amended independent claim 48 to more clearly recite the various features of the present invention. Support for the amendment to claim 48 can be found in the specification at page 10 lines 19-23.

Johnson et al discloses methodology which includes taking slices of samples and storing images of the samples where the data is obtained from visual examination of the images to yield such information as cell density, matrix density, blood vessel density and layer thickness. In contrast, the methodology of the present invention includes a sample processing step whereby the proteins and/or polypeptides in each sample are separated to provide discrimination and resolution of the proteins and/or polypeptides using one technique selected from the following techniques: chromatography; immunoelectrophoresis, mass spectrometry or electrophoresis. The Johnson et al. reference neither discloses nor suggests separating the proteins and/or peptides in order to provide discrimination and resolution thereof. For this reason and others, Applicant respectfully asserts that claim 48 clearly distinguishes the invention over the prior art, and is now in condition for allowance.

Further, it is impossible to take an image, such as an image of a sample as taught in Johnson et al., and subject the image to a separation technique to provide discrimination and resolution of the proteins and/or polypeptides. For this reason and others, Applicant respectfully asserts that claim 48 clearly distinguishes the invention over the prior art, and is now in condition for allowance.

#### 35 USC § 103 Rejection

Claims 50, 51 and 71-76 were rejected under 35 USC § 103 as allegedly being obvious over the disclosure of Johnson et al combined with Palmer et al (US 6,146,863). Applicant

**Serial Number: 09/753,678**

**Anderson et. al**

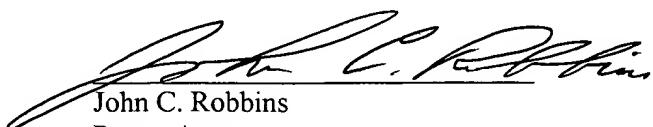
**Page 6 of 6**

respectfully asserts that the amendments to claim 48 discussed above render the rejection moot since claims 50, 51 and 71-76 all depend from amended claim 48.

Further, Applicant respectfully asserts that the rejection based on the combination of the Johnson et al reference and the Palmer reference is improper because there is no motivation to combine these two references. Palmer teaches making and using specific polynucleotides that encode very specific polypeptides. There is no teaching or suggestion in Palmer et al. that would lead one to combine its disclosure with the image based database taught by Johnson et al. For this reason and others, Applicant respectfully asserts that the rejection under 35 USC § 103 has been improperly applied. Applicant respectfully asserts that the claims are now in condition for allowance.

Respectfully submitted,

Date: September 9, 2004



John C. Robbins  
Patent Agent  
Registration No. 34,706  
Large Scale Biology Corporation  
3333 Vaca Valley Parkway Suite 1000  
Vacaville California 95688

Telephone: 707-469-2307